

CITY OF BELMONT
ARCHITECTURAL AND ENGINEERING SERVICES AGREEMENT

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This Architectural and Engineering Services Agreement (hereinafter “Agreement”) is entered into by the City of Belmont, a municipal corporation (hereinafter "City"), and [Click here to enter text.](#), (hereinafter "Consultant"). City and Consultant may be collectively referred to herein as the “parties.”

RECITALS

- A. City requested a proposal from Consultant to perform services that may include architectural, landscape architectural, professional engineering, or professional land surveying services, generally described as: [Click here to enter text.](#)
- B. In response to the City’s request, Consultant submitted a proposal, and, after negotiations, Consultant agreed to perform the services more particularly described on Exhibit “A”, in return for the compensation described in this Agreement and Exhibit “B”.
- C. In reliance upon Consultant’s documentation of its qualifications, the City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall perform the services described in Exhibit “A”, attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
- 2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit “A.” Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 3. **PAYMENT.**
 - 3(A). **Billing.** In order to request payment, Consultant shall submit monthly invoices to the City identifying the services performed and the charges therefore (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant’s billing rates (set forth on Exhibit “B”). The City shall make monthly payments to Consultant for services which are performed in accordance with this Agreement, to the satisfaction of the City.

3(B). “Not to Exceed” Compensation. The compensation payable to Consultant for the services identified in Exhibit “A” shall not exceed \$ [Click here to enter text.](#) Consultant shall not perform any services beyond the services identified in Exhibit “A” without prior written authorization from the City’s Authorized Representative. If the City’s Authorized Representative provides authorization for additional services, the total compensation payable to the Consultant under this Agreement shall not exceed \$ [Click here to enter text.](#)

3(C). Consultant’s Failure to Perform. In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Consultant). If Consultant’s failure to perform in accordance with this Agreement causes damages to the City, Consultant shall reimburse the City for the damages incurred (which may be charged as an offset to Consultant’s payment).

4. AUTHORIZED REPRESENTATIVES.

4(A). Consultant’s Authorized Representative. Consultant understands that, in entering into this Agreement, the City has relied upon Consultant’s ability to perform in accordance with its representations regarding the qualifications of the Consultant (including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any). All services under this Agreement shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative.

4(B). City’s Authorized Representative. For the performance of services under this Agreement, the Consultant shall take direction from the City’s Authorized Representative, [Click here to enter text.](#), unless otherwise designated in writing by the City’s Authorized Representative or the City Manager.

5. INFORMATION AND DOCUMENTATION.

5(A). Information from City. City has made an effort to provide Consultant with all information necessary for Consultant’s performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the City, and the City will provide to Consultant all relevant non-privileged information in City’s possession.

5(B). Consultant’s Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant’s accounting records shall include, at a minimum, all documents which support Consultant’s costs and expenses related to this Agreement, including personnel, subconsultant invoices and payments, and reimbursable expenses. Consultant’s accounting records shall be made available to City within a reasonable time after City’s request, during normal business hours.

5(C). Ownership of Work Product. All original drawings, plans, reports, specifications, calculations, other documents and copyright interests (including all copyrightable interests arising under the 1990 Architectural Works Copyright Protection Act) developed, prepared or discovered by Consultant (including its employees and subconsultants) for this Agreement (collectively “work product”), whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant’s services, or upon demand by the City. Consultant shall have

a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the City.

City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work. The right of the City to modify and reuse the work product for purposes other than that contemplated by the scope of work is subject to the provisions of Business and Professions Code Section 5536.25, 6735, 6735.3 or 6735.4, whichever is applicable.

5(D). Errors/Omissions. Consultant shall correct, at no cost to City, any and all errors, omissions, or ambiguities in the work product submitted to City, provided City gives notice to Consultant. If Consultant has prepared plans and specifications or other design documents to be used in construction of a project, Consultant shall be obligated to correct any and all errors, omissions or ambiguities in the work product discovered prior to and during the course of construction of the project. This obligation shall survive termination of this Agreement.

5(E). Cost Estimates. If the scope of work in Exhibit A requires Consultant to submit estimates of probable construction costs, the provisions of this subsection shall apply. If the total estimated construction cost submitted at any phase of design exceeds ten percent (10%) of the City's stated construction budget, Consultant shall make recommendations to the City for aligning the project design with the budget, incorporate City approved recommendations and revise the design to meet the project budget at no additional cost to City.

6. RELATIONSHIP BETWEEN THE PARTIES. Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is not an officer or employee of City, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

7. CONFLICTS OF INTEREST PROHIBITED. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.

8. NONDISCRIMINATION. Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.

9. COMPLIANCE WITH LAW AND STANDARD OF CARE. Consultant shall comply with all

applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

10. **LABOR COMPLIANCE.** The services to be performed under this Agreement are for “public works” within the meaning of Labor Code Section 1720. Consultant must comply with state prevailing wage and labor law (California Labor Code Sections 1720 through 1861, and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000) for all construction, alteration, demolition, installation, repair or maintenance work over \$1,000 performed under this contract. Consultant’s obligations under prevailing wage and labor compliance laws shall include, but not be limited to: pay at least the applicable prevailing wage and travel and subsistence payments for public works activities performed under this Contract; comply with overtime and working hour requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law. Copies of the applicable prevailing wage rates are on file with the City Project Manager, and shall be made available to any interested party upon request. Consultant shall ensure that the above requirements are included in all its contracts and any lower tier subcontracts for activities for the Project. **INCLUDE THIS PARAGRAPH IF THE SERVICES TO BE PERFORMED UNDER THIS AGREEMENT ARE PART OF THE PRE-CONSTRUCTION PHASE OF A CONSTRUCTION PROJECT (DESIGN, INSPECTION, LAND SURVEYING, ETC.). OTHERWISE DELETE TEXT AND INSERT “RESERVED”**
11. **BUSINESS LICENSE.** The Consultant shall apply for and pay the business tax and registration tax for a business license, in accordance with the Belmont City Code.
12. **INSURANCE.** Consultant must, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, subconsultants, suppliers, and employees) in connection with the performance of Work under this Agreement, including against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work. This Agreement identifies the minimum insurance levels with which Consultant must comply; however, the minimum insurance levels do not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements). City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.
- 12(A). **Coverage.** Consultant must maintain insurance in the following minimum levels:
- 12(A)(1). **Workers’ Compensation.** Workers’ compensation coverage as required by the State of California, with statutory limits.
- 12(A)(2). **Commercial General Liability (CGL).** Commercial general liability with coverage at least as broad as ISO form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury \$1,000,000 per occurrence. and \$2,000,000 aggregate.
- 12(A)(3). **Employer’s Liability.** Employer’s liability in an amount not less than \$1,000,000 per

accident for bodily injury or disease.

12(A)(4). Automobile Liability. Automobile liability with coverage at least as broad as ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9) in an amount not less than \$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Consultant's vehicle usage in performing services hereunder).

12(A)(5). Professional Liability. For design-build projects, or if the Work requires Consultant to provide professional services related to environmental hazards, professional liability in an amount not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

12(B). Additional Coverage. Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. If Consultant maintains higher levels than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum levels of insurance and coverage shall be available to the City.

12(C). Insurer Qualifications. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

12(D). Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either:

12(D)(1). Consultant must reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or,

12(D)(2). Consultant must provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

12(E). Subrogation Waiver. Consultant hereby grants to City a waiver of any right to subrogation which any insurer of Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subcontractors. This provision applies regardless of whether or not the City has requested or received a waiver of subrogation endorsement from the insurer.

12(F). Evidence of Coverage. Concurrently with the execution of this Agreement, Consultant must furnish City with original certificates and amendatory endorsements, or copies of information or declaration page listing all policy endorsements of the insurance required hereunder. However, failure to obtain the required documents before the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

12(G). Endorsements. The insurance policies must be endorsed as follows:

12(G)(1). For commercial general liability and automobile liability insurance, the City (including

its elected officials, employees, and agents) must be named as an additional “insured”. The endorsement must include liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of Consultant. For commercial general liability, the policy must be endorsed with a form at least as broad as ISO form CG 20 10, GC 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used.

12(G)(2). Consultant’s insurance is primary to any other insurance (including self-insurance) available to the City (including its elected officials, employees, and agents) with respect to any claim arising out of this Agreement. Any insurance maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

12(G)(3). No policy shall be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the City by first class mail.

12(H). **Claims Made Policies.** If any required coverage is made on a claims-made form:

12(H)(1). The “Retro Date” must be shown, and must be before the date of the contract or the beginning of contract work.

12(H)(2). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

12(H)(3). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the contract effective date, Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

12(H)(4). A copy of the claims reporting requirements must be submitted to City for review.

12(H)(5). If the services involve lead-based paint or asbestos identification/remediation, Consultant’s Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, Consultant’s Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

12(I). **Subcontractors.** Consultant must require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant must ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors must provide coverage with a format least as broad as CG 20 38 04 13.

13. **REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager’s office by email at finance@belmont.gov, and Consultant shall promptly submit to the City’s Risk Manager and the City’s Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

14. INDEMNIFICATION.

14(A). General Indemnification and Defense. Other than in the performance of design professional services, to the fullest extent permitted by law, Consultant shall immediately defend and indemnify the City and its elected officials, officers, employees and agents (“Indemnified Parties”) from and against all liability of every kind, nature and description that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Consultant’s obligation to indemnify for the liability shall be reduced in proportion to the established comparative liability.

14(B). Design Professional Services Indemnification and Defense.

14(B)(1). To the fullest extent permitted by law, with respect to the performance of design professional services as defined by Civil Code Section 2782.8, Consultant shall indemnify and defend the City, its elected officials, officers, employees and agents, from all liability of every kind, nature and description that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant’s officers or employees.

14(B)(2). Consultant’s obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Consultant’s obligation to indemnify for the liability shall be reduced in proportion to the established comparative liability.

14(B)(3). If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys’ fees and defense costs in proportion to the established comparative liability of the indemnified party.

14(B)(4). Notwithstanding language to the contrary in subsections (B) and (C), Consultant is not required to provide or to pay for an up-front defense against unproven claims or allegations related to design professional services, but must reimburse those reasonable attorneys’ fees and other costs of defense incurred by the City to the extent the liability defended against is caused by the negligence, recklessness, or willful misconduct of Consultant or its employees, agents or subcontractors. **KEEP THIS PARAGRAPH IF CITY AGREES TO LIMITED DUTY TO DEFEND OTHERWISE DELETE – CONFIRM DECISION AND REMOVE THIS HIGHLIGHTED TEXT BEFORE TRANSMITTING TO CONSULTANT**

14(C). Duty to Defend. The duty to defend is a separate and distinct obligation from Consultant’s duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings. An allegation or determination that persons other than Consultant are responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, then

Consultant's obligation to pay the costs of defense shall be reduced in proportion to the established comparative liability of the indemnified party.

14(D). Consultant must cooperate, at no additional cost to the city, in the defense of any claims.

14(E). Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant's officers or employees. The provisions of this section are not limited by the requirements in this Agreement related to insurance.

14(F). Enforcement Costs. Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in this section.

14(G). Covered Liabilities. Liabilities subject to the duties to defend and indemnify in subsections (A) and (B) include, without limitation, all claims, demands, damages, costs, expenses, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

15. TERM OF THE AGREEMENT. The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit "A" and paragraph 2 of this Agreement. This Agreement may be terminated by the City without cause upon fifteen (15) days written notice to Consultant. If the City exercises its right to terminate this Agreement in accordance with this paragraph, the City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit "B" or the maximum amount authorized under paragraph 3 of this Agreement.

16. DEFAULT. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

17. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City of Belmont

To: Consultant

Attn: [Click here to enter text.](#)

[Click here to enter text.](#)

One Twin Pines Lane, Suite [Click here to enter text.](#)

Belmont, CA 94002

Attn: [Click here to enter text.](#)

[Click here to enter text.](#)

[Click here to enter text.](#)

[Click here to enter text.](#)

18. **HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
19. **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
20. **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Mateo.
21. **ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
22. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
23. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
24. **CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.
25. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
26. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

CITY OF BELMONT

By: _____
Greg Scoles, City Manager

Date: _____

APPROVED AS TO FORM

Scott M. Rennie, City Attorney

FUNDING VERIFIED

Thomas Fil, Finance Director

CONSULTANT

[Click here to enter text.](#)

By: _____

(print name) (print title)

Date: _____

By: _____

(print name) (print title)

Date: _____